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### Editorials

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## EDITORIALS

### CRIMINAL PROCEDURE REFORM

Criminal procedure reform is the crying need of the hour in the administration of justice. Recent cases, notably the Remus case, have given rise to a widespread popular interest in the problems involved. No longer does anyone except the blind worshiper of the traditional for tradition's sake gainsay the need of immediate reform. The time is ripe for action. It becomes the solemn duty of an enlightened bar to work out and make effective changes which are long overdue.

The specific measures of reform needed are best indicated by the very fallacies of the existing system. The method of empanelling a jury is much at fault. Why should prospective jurors be questioned on their *voir dire* as to whether they have read about the case or otherwise know about the case? Tentative opinions do not in themselves disqualify the prospective juror. Yet these elements should not even be preliminary factors in determining a juror's qualification. In their beginnings such tests were guarantees of impartiality. Modern means of

the communication of news make them guarantees of ignorance only. Too often under the existing system only those *incapable of an opinion* are qualified. If we are to expect the best results intelligence must be regarded as the hand-maiden of justice, not the enemy. So acutely do some feel the need of reform in this regard that they have suggested that certain literacy tests be required of jurors. In any event the questioning of prospective jurors should be left more in the hands of the trial judge and less in the hands of opposing counsel. Then and only then can the technical objections and consequent delay be avoided. Then and only then can the full ends of justice be met.

A second fallacy is that everything must favor the accused. As Charles P. Taft II. has sanely reflected since the Remus case, "The enforcement of criminal justice has been in the interest of criminals, the criminal lawyers, the professional bondsmen, and the politicians who found political support in a judicious use of their influence." The historical reasons for this fact are pointed out in Harper's for November 1927, page 756. This condition should be remedied. The number of peremptory challenges should be equalized. The recommendation of the Law Reform Committee to the State Bar Association last year was a sane one: "Amend section 203 of the criminal code so as to equalize the number of challenges in felony cases, allowing each side to have five." A like recommendation that section 1645 be so amended as to allow the prosecuting attorney to comment upon the failure of the defendant to take the stand in his own behalf is worthy of support. The evidence allowed in support of insanity pleas and the consequent popularity of such pleas is a further problem which deserves attention. A prominent Circuit Judge in the State has suggested that alienists be employed by the State and that only such be allowed to testify.

These and other reforms must be speedily effected if the jury system is to be saved. Already bolder spirits are predicting a supplanting of the jury by three trial judges. Such an extreme position is not necessary. The true friend of the jury system is not he who would forestall any attempt at change. The true friend is he who would recognize the defects and speedily correct them. The bar of our own State have an obligation in this matter to which they cannot well afford to prove recreant.

## SALARY BASIS FOR LOWER COURT JUDGES

The abolition of the fee system of payment of lower court judges has created an important problem in our State. Last year the Supreme Court of the United States held that a magistrate or judge cannot legally try a case in which he is financially interested in the outcome. As a natural consequence the Court of Appeals of Kentucky has held that the present system of paying magistrates by adding *costs of court* on to fines is illegal. Of course there is a need for the lower courts and an immediate need that the magistrate be recompensed for his services.

In the hurry to provide some sort of relief, schemes have been suggested which do not reflect a mature judgment. Bills have been introduced in both the House of Representatives and the Senate. These bills apparently bear the approval of the County Judges' Association. The gist of these bills is that a flat fee of \$4.50 per trial be allowed, regardless of the outcome of the case. The measure provides supposed safeguards against mercenary magistrates by requiring that warrants of arrest be approved by county or Commonwealth's attorneys.

While the fate of these bills is still in doubt as the Kentucky Law Journal goes to press, it is clear that whatever the result such a system cannot be permanently successful. The constitutionality of the measure is doubtful; its unsoundness as a matter of policy is patent. The inherent defect in the fee system was that it gave the judge an interest in the outcome of the case. The inherent defect in the proposed substitute is that it puts a premium on trials. Its possibilities for mischief are too obvious to require argument. It is worthy of note that the press all over the State has sounded warning against its potential evils.

The safer and saner way would be to avoid even the possibility of injustice and mischief. The most effective way by which this can be done is to place lower court judges and magistrates on a strict salary basis. This method will undoubtedly be the final issue of the present situation. It would be much better if it could be done now.